

SUPPORTING JUSTIFICATION
Railroad Safety Appliance Standards
OMB No. 2130-0594

Summary of Submission

- This submission is a request for an extension with change of the last approval granted by OMB on **September 25, 2014**, which expires **September 30, 2017**.
- FRA published the required 60-day **Federal Register** Notice on March 14 2017. See 82 FR 13711.
- The total number of burden **hours requested** for this submission is **35,107 hours**.
- The total burden **previously approved** for this information collection amounted to **30,487 hours**.
- The increase in burden from the last approved submission amounts to **4,620 hours**.
- Total **adjustments** amount to **4,620 hours**.
- There are no program changes
- Total number of **responses requested** for this submission is **7,190**.
- Total number of **responses previously approved** for this submission is **4,655**.
- **Adjustments increased** responses by **2,535**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 9-19).**
- ****The answer to question number 15 itemizes all adjustments (See pp. 21-22).**

1. Circumstances that make collection of the information necessary.

Background

The Association of American Railroads (AAR) submitted a petition to amend 49 CFR Part 231 on March 28, 2006. The AAR petition requested that FRA adopt new Federal railroad safety appliance standards to incorporate changes in railcar design that have occurred since the safety appliance regulations were promulgated in their current form. FRA acted on AAR's request by amending 49 CFR Part 231 to add sections 231.33 and

231.35 to the existing regulations. These new sections established a special approval process similar to that found in Parts 232 and 238. The special approval process enabled the railroad industry to submit new rail equipment designs to FRA for approval with respect to the placement and securement of safety appliances on the designs. Safety appliances include couplers to couple and uncouple cars, grab irons, stirrup steps, hand brakes, running boards on top of freight cars and running board extensions, FRA anticipated that the special approval process would have multiple benefits, including allowing for greater flexibility within the railroad industry and increasing rail safety by incorporating modern ergonomic design standards and technological advancements in construction.

The Railroad Safety Appliance Standards set forth in 49 CFR Part 231 arose out of an extended legislative and regulatory effort, beginning in the 19th century, to improve the safety of railroad employees and the public. Ultimately, the first Safety Appliance Act was passed by Congress and signed into law on March 2, 1893. Among other things, the first Safety Appliance Act required the use of power brakes on all trains engaged in interstate commerce as well as requiring all railcars engaged in interstate commerce to be equipped with automatic couplers, drawbars, and handholds. In 1903, Congress passed the second Safety Appliance Act, which extended the requirements of the first Act to any rail equipment operated by a railroad engaged in interstate commerce. Finally, in 1910, the third Safety Appliance Act was passed requiring that all cars be equipped with hand brakes, sill steps, and, where appropriate, running boards, ladders, and roof handholds. The third Safety Appliance Act also directed the Interstate Commerce Commission (ICC) to designate the number, dimensions, locations, and manner of application of the various safety appliances identified in the Act.

The ICC complied with this mandate by issuing its Order of March 13, 1911. The March 13, 1911, order first established the Federal railroad safety appliance standards. This order, as amended, designated the number, dimensions, location, and manner of application for safety appliances on box cars, hopper cars, gondola cars, tank cars, flat cars, cabooses, and locomotives. It also contained a catch-all section for “cars of special construction” that were not covered specifically in the order. In many ways, the March 13, 1911, order continues to serve as the basis for the present day regulations found in Part 231. Indeed, although FRA supplanted the ICC as the agency responsible for promulgating and enforcing railroad safety programs in 1966 (see Department of Transportation Act of 1966, 49 U.S.C. 103), the general framework established by the order of March 13, 1911, is still in existence today.

The Federal railroad safety appliance standards encompassed in Part 231 served the purpose of increasing railroad safety by identifying the applicable safety appliance requirements for various individual car types. (See e.g. 49 CFR § 231.1, box and other house cars built or placed into service before October 1, 1966.) While these regulations continued to serve their purpose, FRA recognized the railroad industry has evolved over

time. The industry has created -- and continues to create -- new railcar types to satisfy the demands for transporting freight as well as passengers on the present-day railroad. It should be noted that FRA considered making the Safety Appliance regulations performance-based. However, many of the safety appliance standards in this regulation are mandated by statute. Also, major safety appliances on railroad equipment, such as where to place ladders, are not conducive to performance-based regulations. But, to the extent performance-based standards can be included in this regulation, the petitions for special approval of alternative standards provide such an avenue.

Many of the modern railcar types that are presently being built to handle railroad traffic do not fit neatly within any of the specific car body types identified in the existing regulations and ambiguities sometimes arise regarding the placement of safety appliances on these car types. Because modern car designs often cannot be considered a car type that is explicitly listed in Part 231, they are typically treated as cars of special construction. See 49 CFR § 231.18. The “cars of special construction” provision does not identify specific guidelines that can be used by the railroad industry to assist it in the construction and maintenance of the safety appliances on modern railcar designs. Instead, § 231.18 directed the industry to use the requirements, as nearly as possible, of the nearest approximate car type. Problems arose because modern car designs are often combinations of multiple car types, and the design of any particular car may appear to be one type or another depending on the position of the individual viewing the car. As an example, a bulkhead flat car appears to be a box car when viewed from the A-end or B-end of the car, but appears to be a flat car when viewed from either side. As a result, the industry is forced to use bits and pieces from multiple sections of Part 231 in an effort to ensure compliance with the Federal railroad safety appliance standards on bulkhead flatcars and other modern rail equipment.

Another problem for modern railcar designs is that Part 231 defined the location of many safety appliances by reference to the side or end of the railcar. While this worked well for the car types that were in existence when the ICC issued its March 13, 1911 Order, it often proved difficult to define exactly what parts on modern railcars constitute the side or end. This resulted in ambiguity regarding what is the appropriate location for certain safety appliances, such as handholds and sill steps.

Moreover, the requirements in Part 231 sometimes allowed for spatial relationships between safety appliances that can result in the placement of appliances in less than optimal locations to ensure the safety of a person working in and around the railcar. For example, in § 231.21, Tank Cars Without Underframes, the center of the tread of the sill step can be up to 18 inches from the end of the car while the outside edge of the horizontal side handhold over the sill step can be up to 12 inches from the end of the car. Consequently, a car built using these requirements may be compliant with the regulation even though the sill step and horizontal handhold are not aligned in a manner that maximizes the safety of a person working in and around the car.

Together these factors made compliance with the Federal railroad safety appliance standards difficult and inefficient when dealing with modern railcar designs. In addition, the current regulations did not contemplate advancements in the design of such vehicles. This means that the current regulations can operate to preclude the application of technological innovations and modern ergonomic design principles that would increase the safety of persons who work on and around rail equipment and use safety appliances on a regular basis.

The AAR Safety Appliance Task Force (Task Force) consisted of representatives from the Class I railroads, labor unions, car builders, and government (FRA and Transport Canada participate as a non-voting members), as well ergonomics experts. The Task Force was created by AAR's Equipment Engineering Committee to develop new industry standards for safety appliance arrangements that could be used to reduce the differences of opinion that can arise in the interpretation of the Federal safety appliance standards in Part 231. The Task Force has drafted a base safety appliance standard as well as industry safety appliance standards for modern boxcars, covered hopper cars, and bulkhead flat cars. These industry safety appliance standards have been adopted by AAR's Equipment Engineering Committee, and FRA expects them to serve as the core safety appliance criteria that can be used to guide the safety appliance arrangements on railcars that are more specialized in design. The industry safety appliance standards developed by the Task Force incorporate ergonomic design principles that increase the safety and comfort for persons working on and around safety appliance apparatuses. For example, the Task Force standards establish minimum foot clearance guidelines for end platforms that allow for wider and stiffer sill steps to support a person's weight.

The AAR petition to amend Part 231 requested that FRA adopt these new industry standards and amend its regulations to recognize changes in railcar design since the safety appliance regulations were promulgated in their current form. Because the standards submitted by AAR in connection with its petition require some modification before they can be approved and adopted by FRA, FRA did not propose to incorporate the standards into Part 231 at the time. FRA preferred to utilize the process established in this final rule to fully evaluate and assess the industry safety appliance standards developed by AAR through the Task Force to ensure that they are complete and enforceable. The Safety Appliance Task Force was established about 15 years ago. This Task Force includes members from FRA, the Association of American Railroads (AAR), and rail labor unions. Thus, FRA acted on AAR's petition for rulemaking by establishing a special approval process similar to that currently contained in 49 CFR Parts 232 and 238.

Section 232.17 allowed railroads to adopt alternative standard for single car air brake tests and use new brake system technology where the alternative standard or new technology is shown to provide at least the equivalent level of safety. Similarly, § 238.21 allowed railroads to adopt alternative standards related to passenger equipment safety in a wide range of areas such as performance criteria for flammability and smoke

emission characteristics, fuel tank design and positioning, single car air brake testing, and suspension system design, where the alternative standards or new technologies are demonstrated to provide at least the equivalent level of safety. Section 238.230 borrowed the process set out in § 238.21. It allowed a recognized representative of the railroads to request special approval of industry-wide alternative standards relating to the safety appliance arrangements on any passenger car type considered to be a car of special construction.

The final rule closely followed the processes set forth in §§ 232.17, 238.21, and 238.20. The special approval process incorporated into Part 231 established a process for submitting, reviewing, and approving the use of safety appliance standards once they have been developed by the industry. The process also allowed for an industry representative to submit modifications of industry-approved safety appliance standards for FRA's review and approval. Once an existing industry safety appliance standard or modification to an existing industry safety appliance standard is reviewed by FRA and is approved by the agency it becomes applicable to the industry for the purposes of new railcar construction. FRA expects that this amendment to Part 231 serves to benefit railroad safety by: (1) allowing FRA to take into account technological advancements and ergonomic design standards for new car construction, (2) ensuring that modern railcar designs comply with applicable statutory and safety-critical regulatory requirements related to safety appliances, and (3) providing flexibility to efficiently address safety appliance requirements on new railcar and locomotive designs in the future.

2. How, by whom, and for what purpose the information is to be used.

The information collected is used by FRA to enhance rail safety by establishing clear industry standards to allow the safe placement and securement of safety appliances on modern rail equipment. The information collected is used by FRA to better serve the goal of adapting to changes in modern rail car design while also facilitating statutory and regulatory compliance.

Railroad industry representatives are permitted to submit requests for the approval of existing industry standards regarding rail equipment. These requests are submitted to FRA electronically in the form of a letter. There is no FRA form used or needed. FRA reviews such petitions for special approval of an existing industry standard for new car construction to determine whether it is safe, appropriate, and in the public interest to approve an industry standard relating to the safety appliance arrangements on newly constructed railroad cars and locomotives in lieu of the specific provisions currently codified in 49 CFR 213 for cars of special construction. FRA reviews these special approval petitions to further rail safety by considering technological advancements and ergonomic design standards for new car construction. These petitions are submitted by the Association of American Railroads (AAR).

The information collected is also used by FRA to ensure that representatives of rail labor employees who operate, inspect, test, and maintain such rail equipment, other organizations or bodies that either issued the standard to which the special approval pertains or issued the industry standard that is proposed in the petition, and any other persons filing current statements of interest with FRA are fully informed in a timely manner of such special approval petitions and are provided an opportunity to comment before FRA makes a decision on such special approval petitions. FRA reviews and considers all documents and comments submitted by respondents in its decision making process.

FRA applies the same process and level of review and scrutiny to requests for modification of an approved industry safety appliance standards.

In sum, FRA uses all the information collected to further its comprehensive national regulatory safety program that seeks to reduce rail accidents and incidents, and corresponding fatalities, injuries, and property damage.

3. Extent of automated information collection.

For many years now, FRA has strongly encouraged and highly endorsed the use of advanced information technology to reduce burden on respondents (wherever possible). In particular, FRA has been a very strong proponent of the use of electronic recordkeeping by railroads and other members of the rail industry. Unless specified otherwise in its rulemakings, respondents may provide required information to FRA electronically, if they so choose. Sections 231.33(e) and 231.35(d) of this rule provide that electronic submission of comments to FRA may be made via the Internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA are immediately provided to the DOT FeP for inclusion in the public docket related to the petition.

Thus, 100% of the information required by this final rule may be provided and are actually electronically provided to FRA by railroads. Railroads are not required to send hard copies of the required documents, but often do so *as a courtesy* when complex drawings and other important documents are involved so that FRA can more readily review these drawings and other key documents in a careful and thorough manner. Other members of the rail industry and rail labor representatives and members of the public also send documents electronically to FRA.

4. Efforts to identify duplication.

The information collection requirements are entirely associated with this rulemaking; are new; and, to our knowledge, are not duplicated anywhere.

Similar data are not available from any other source.

5. **Efforts to minimize the burden on small businesses.**

Background

The U.S. Small Business Administration (SBA) stipulates in its “Size Standards” that the largest a railroad business firm that is “for-profit” may be, and still be classified as a “small entity,” is 1,500 employees for “Line-Haul Operating Railroads,” and 500 employees for “Switching and Terminal Establishments.” “Small entity” is defined in the Act as a small business that is not independently owned and operated, and is not dominant in its field of operation. Federal agencies may use different “Size Standards” after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes “small entities” as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently \$20 million or less in annual operating revenue. The \$20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board’s (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

There are approximately 700 railroads that could be affected by this regulation. Consequently, this regulation could affect a substantial number of small entities. However, FRA does not anticipate that this regulation, which established a permissive process that allows for FRA approval of industry standards, would impose a significant economic impact on a substantial number of small entities.

The rule also applies to governmental jurisdictions or transit authorities that provide commuter rail service – none of which is small for purposes of the SBA (i.e., no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation are also subject to this rule, but they are not small entities and likewise receive Federal transportation funds.

The rule will not have a significant economic impact on a substantial number of small entities, as there are no direct costs to small entities. Small entities will not be responsible for preparing the petitions for special approval.

Furthermore, FRA does not believe there are any significant costs to implementing any approved industry standard as any such standard will likely be a repositioning of existing safety appliances and will only be applicable to newly manufactured units. FRA believes that these construction costs, if any, will be negligible. Moreover, few small entities purchase newly manufactured equipment; generally, these operators acquire used equipment from larger railroads. Accordingly, FRA does not consider this impact of this rule to be significant for small entities, and has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this rule, and certifies that

this rule is not expected to have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If FRA did not collect this information or collected it less frequently, railroad safety would be directly and negatively impacted. Without the information collected, there would be no clear, current, and accepted industry standard regarding the safe placement and securement of safety appliances on modern rail equipment. Without such a standard, technological advancements and ergonomic design standards for new car construction could not be incorporated for the construction of the new rail cars and locomotives. Safety appliances then might be placed and secured on newly built rail equipment in an unsafe, improper, or inconvenient location, thus contributing to more train crew and other rail employee injuries and fatalities.

Without the information collected, FRA would not have adequate, necessary, and critical information to make the best agency decision concerning special approval petitions of an existing industry safety appliance standard and modification requests to an approved industry safety appliance standard for new car construction. It is vital for all members of the rail industry to be fully informed in a timely manner of such special approval petitions and modification requests through the stipulated procedures. It is equally critical for the rail industry community and the general public to have the opportunity to provide their comments on such special approval petitions and modification requests before the agency makes a decision regarding approval of such a safety appliance industry standard.

In sum, the proposed collection of information assists both DOT and FRA in fulfilling their top goals and primary mission, which is to promote and enhance safe transportation throughout the United States.

7. Special circumstances.

All information collection requirements are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995 and 5 CFR 1320, FRA published a notice in the Federal Register on **March 14, 2017**, soliciting comment on these information collection requirements from the public, railroads, and other interested parties. See 82FR 13711. FRA received no comments in response to this notice.

Additionally, FRA published the required 30-day Federal Register Notice on **July 13, 2017**. See 82 FR 32439. Since any comments in response to this Notice went directly to OMB and since FRA has not heard anything from OMB or any commenter directly, FRA

believes that there were no comments regarding this notice as well.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

10. Assurance of confidentiality.

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. Justification for any questions of a sensitive nature.

There are no questions of a sensitive or private nature involving this regulation.

12. Estimate of burden hours for information collected.

Note: Respondent universe for this collection of information consists of approximately 755 railroads, five (5) labor unions, and the Association of American Railroads (AAR). As a result, the respondent universe consists of approximately 761 entities. The majority of requirements for this rule call for a response from an industry representative, which most likely will come from the AAR.

FRA is including the dollar equivalent cost for each of the burden hours itemized below using the AAR publication Railroad Facts 2016 as the basis for each cost calculation. For railroad professional and administrative staff, the hourly wage rate amounts to \$75 per hour (includes 75% overhead costs). (Note: AAR offers this publication for purchase online at <https://www.aar.org> under the category Publications/Catalog in either a print version (\$20) or an online version (\$60).

§ 231.33 – Procedure for special approval of existing industry safety appliance standards.

A. (a.) General. The following procedures govern the submission, consideration and handling of any petition for special approval of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or similar vehicles.

(b.) Submission. An industry representative may submit a petition for special approval of an existing industry safety appliance standard for new construction. A petition for special approval of an industry standard for safety appliances shall include the following:

(1) The name, title, address, and telephone number of the primary individual to be contacted with regard to review of the petition.

(2) An existing industry-wide standard that, at a minimum:

(i) Identifies the type(s) of equipment to which the standard would be applicable and the section or sections within the safety appliance regulations that the existing industry standard would operate as an alternative to for new car construction;

(ii) Ensures, as nearly as possible, based upon the design of the equipment, that the standard provides for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in this part;

(iii) Complies with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302;

(iv) Addresses the specific number, dimension, location, and manner of application of each safety appliance contained in the industry standard;

(3) Appropriate data or analysis, or both, for FRA to consider in determining whether the existing industry standard will provide at least an equivalent level of safety;

(4) Drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances; and

(5) Demonstration of the ergonomic suitability of the proposed arrangements in normal use.

FRA estimates that approximately 100 petitions for special approval will be filed each year with FRA under the above requirement. It is estimated that it will take approximately 160 hours to complete each petition and send it to FRA. Total annual burden for this requirement is 16,000 hours.

Respondent Universe:

		AAR (Industry Representative)
Burden time per response:	160 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	100 petitions	
Annual Burden:	16,000 hours	
Annual Cost:		\$1,200,000

Calculation: 100 petitions x 160 hrs. = 16,000 hours

(6) A statement affirming that the petitioner has served a copy of the petition on designated representatives of the employees responsible for the equipment’s operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served.

FRA estimates that approximately 100 statements that the petitioner has served copies on the parties stipulated in 231.33(c) will be made each year under the above requirement. It is estimated that it will take approximately two (2) hours to complete each statement and send it to FRA. Total annual burden for this requirement is 200 hours.

Respondent Universe:

	AAR (Industry Representative)
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	100 affirmation statements
Annual Burden:	200 hours
Annual Cost:	\$15,000

Calculation: 100 affirmation statements x 30 min. = 200 hours

B. (c.) Service.

(1) Each petition for special approval under paragraph (b) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Ave. SE, Washington, D.C. 20590.

(2) Service of each petition for special approval of an existing industry safety appliance standard under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment’s operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard to which the special approval pertains or issued the industry standard that is proposed in the petition; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than five (5) years prior to the filing of the petition.

There are approximately 90 current members/affiliated members of the Association of American Railroads (AAR). Copies will be served on all these members. Copies will also be served on the five (5) rail labor unions, two (2) ergonomic groups, TTX Company

(1), and an estimated 15 persons of interest. Thus, for each of the previously estimated 100 special approval petitions, FRA estimates that approximately 11.3 copies will be served on the specified parties under the above requirement (or grand total of 1,130 copies per year). It is estimated that it will take approximately 15 minutes to copy each special approval petition and serve it on the designated party. Total annual burden for this requirement is 283 hours.

Respondent Universe:		AAR (Industry Representative)
Burden time per response:	15 minutes	
Frequency of Response:	On occasion	
Annual number of Responses:	1,130 special approval petition copies	
Annual Burden:	283 hours	
Annual Cost:		\$21,225

Calculation: 1,130 spec. approval petition copies x 15 min. = 283 hrs.

If filed, a statement of interest shall be filed with the FRA Docket Clerk, West Building Third Floor, Office of the Chief Counsel, 1200 New Jersey Ave. SE, Washington, D.C. 20590, and shall reference the specific section(s) of this Part in which the person has an interest. A statement of interest that properly references the specific section(s) in which the person has an interest will be posted in the docket to ensure that each statement is accessible to the public.

FRA estimates that approximately 150 statements of interest will be filed with FRA under the above requirement. It is estimated that it will take approximately eight (8) hours to complete each statement of interest and send it to FRA. Total annual burden for this requirement is 1,200 hours.

Respondent Universe:		5 RR Labor Unions/Gener al Public
Burden time per response:	8 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	150 statements of interest	
Annual Burden:	1,200 hours	

Annual Cost: \$90,000
Calculation: 150 statements of interest x 8 hrs. = 1,200 hours

C. (e.) Comment

Not later than 60 days from the date of publication of the notice in the Federal Register concerning a petition received pursuant to paragraph (b) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, Washington, D.C. 20590 or electronically via the internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

FRA estimates that approximately 75 comments will be made under the above requirement. It is estimated that it will take approximately 10 hours to complete each comment and send it to FRA. Total annual burden for this requirement is 750 hours.

Respondent Universe:

755
 Railroads/5
 Labor Groups

/General
 Public

Burden time per response:	10 hours
Frequency of Response:	On occasion
Annual number of Responses:	75 comments
Annual Burden:	750 hours
Annual Cost:	\$56,250

Calculation: 75 comments x 10 hrs. = 750 hours

D. (f.) Disposition of Petitions.

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter, if necessary.

The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: “The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ...” Since this provision pertains to an administrative action, there is no burden associated with these requirements.

(2) FRA will normally act on a petition within 90 days of the close of the comment period related to the petition. If the petition is neither granted nor denied within that timeframe, the petition will remain pending unless withdrawn by the petitioner.

(3) A petition may be:

(i) Granted where it is determined that the petition complies with the applicable Federal statutes, that the petition complies with the requirements of this section, and the existing industry safety appliance standard provides at least an equivalent level of safety as the existing FRA standards;

(ii) Denied where it is determined that the petition does not comply with an applicable Federal statute, the petition does not comply with the requirements of this section, or the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standards; or

(iii) Returned to the petitioner for additional consideration where it is determined that further information is required or that the petition may be amended in a reasonable manner to comply with all applicable Federal statutes, that the petition may be amended to comply with the requirements of this section, or to ensure that the existing industry standard provides at least an equivalent level of safety as the existing FRA standards. Where the petition is returned to the petitioner, FRA will provide written notice to the petitioner of the item(s) identified by FRA as requiring additional consideration. Petitioner shall reply within 60 days from the date of FRA’s written notice of return for additional consideration or the petition will be deemed withdrawn, unless good cause is shown. Petitioner’s reply shall:

(A) Address the item(s) raised by FRA in the written notice of the return of the petition for additional consideration;

(B) Comply with the submission requirements of paragraph (b) of this section; and

(C) Comply with the service requirements in paragraph (c) of this section.

FRA estimates that approximately three (3) petitions will be returned requesting additional information and thus three (3) information documents or amended petitions will be completed under the above requirement. It is estimated that it will take approximately six (6) hours to complete the additional information document or amended petition. Total annual burden for this requirement is 18 hours.

Respondent Universe:

AAR
(Industry
Representative
)

Burden time per response:	6 hours
Frequency of Response:	On occasion
Annual number of Responses:	3 petitions/additional documents
Annual Burden:	18 hours
Annual Cost:	\$1,350

Calculation: 3 petitions/additional document x 6 hrs. = 18 hours

(4) When FRA grants or denies a petition, or returns a petition for additional consideration, written notice will be sent to the petitioner and other interested parties.

(5) If a petition is granted, it shall go into effect on the date specified in FRA's written notice granting the petition. If no date is specified in FRA's written notice granting the petition, the effective date shall begin January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. FRA will place a copy of the approved industry safety appliance standard in the related public docket where it can be accessed by all interested parties.

(6) A petition, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with an applicable Federal statute; that the approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

FRA estimates that zero (0) petitions will be reopened for good cause shown. Consequently, there is no burden associated with the above requirement.

Total annual burden for this entire requirement is 18,451 hours (16,000 + 200 + 283 + 1,200 + 750 + 18), or a total annual cost of \$1,383,825.

§ 231.35 -- Procedure for modification of an approved industry safety appliance standard for new car construction.

- A. (a.) Petition for modification of an approved industry safety appliance standard. An industry representative may seek modification of an existing industry safety appliance standard for new car construction of railroad cars, locomotives, tenders, or similar vehicles after the petition for special approval has been approved pursuant to 49 CFR § 231.33. The petition for modification shall include each of the elements identified in 49 CFR § 231.33(b).

FRA estimates that approximately 48 petitions for modification of an approved industry safety appliance standard will be made each year under the above requirement. It is estimated that it will take approximately 100 hours to complete each petition for modification. Total annual burden for this requirement is 4,800 hours.

Respondent Universe:

		AAR (Industry Representative)
Burden time per response:	100 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	48 modification petitions	
Annual Burden:	4,800 hours	
Annual Cost:		\$360,000

Calculation: 48 modification petitions x 100 hrs. = 4,800 hours

Under 49 CFR § 231.33(b)(3), a statement affirming that the petitioner has served a copy of the petition on designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served, is required.

FRA estimates that approximately 48 statements that the petitioner has served copies on the parties stipulated in 231.33(c) will be made under the above requirement. It is estimated that it will take approximately 60 minutes to complete each statement and send it to FRA. Total annual burden for this requirement is 48 hours.

Respondent Universe:

		AAR (Industry Representative)
Burden time per response:	60 minutes	

Frequency of Response:	On occasion
Annual number of Responses:	48 affirmation statements
Annual Burden:	48 hours
Annual Cost:	\$3,600

Calculation: 48 affirmation statements x 60 min. = 48 hours

B. (b.) Service.

(1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Ave. SE, Washington, D.C. 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than five (5) years prior to the filing of the petition.

There are approximately 90 current members/affiliated members of the Association of American Railroads (AAR). Copies will be served on all these members. Copies will also be served on the five (5) rail labor unions, two (2) ergonomic groups, TTX Company (1), and an estimated 15 persons of interest. Thus, for each of the previously estimated 48 special approval petitions, FRA estimates that approximately 113 copies will be served on the specified parties under the above requirement (or grand total of 5,424 copies per year). It is estimated that it will take approximately two (2) hours to copy each special approval petition and serve it on the designated party. Total annual burden for this requirement is 10,848 hours.

Respondent Universe:

AAR
(Industry
Representative
)

Burden time per response:	2 hours
Frequency of Response:	On occasion

Annual number of Responses:	5,424 special approval petition copies
Annual Burden:	10,848 hours
Annual Cost:	\$813,600

Calculation: 5,424 spec. approval petition copies x 2 hrs. = 10,848 hours

If filed, a statement of interest shall be filed with FRA’s Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

FRA estimates that approximately 72 statements of interest will be filed with FRA under the above requirement. It is estimated that it will take approximately eight (8) hours to complete each statement of interest and send it to FRA. Total annual burden for this requirement is 576 hours.

Respondent Universe:	5 RR Labor Unions/General Public
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Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	72 statements of interest
Annual Burden:	576 hours
Annual Cost:	\$43,200

Calculation: 72 statement of interest x 8 hrs. = 576 hours

- C. (d.) Comment. Not later than 60 days from the date of publication of the notice Federal Register concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:
- (1) Set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding; and
 - (2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, Washington, D.C. 20590 or electronically via the internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

FRA estimates that approximately 36 comments concerning modification petitions will be made under the above requirement. It is estimated that it will take approximately 10 hours to complete each comment and send it to FRA. Total annual burden for this requirement is 360 hours.

Respondent Universe:

755
Railroads/5
Labor Unions/

	General Public	
Burden time per response:	10 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	36 comments	
Annual Burden:		360 hours
Annual Cost:		\$27,000

Calculation: 36 comments x 10 hrs. = 360 hours

- D. (e.) FRA Review. During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

FRA estimates that approximately four (4) petitions will be returned requesting additional information and thus four (4) petitions information documents or amended petitions will be completed under the above requirement. It is estimated that it will take approximately six (6) hours to complete the additional information document or amended petition. Total annual burden for this requirement is 24 hours.

Respondent Universe:

AAR
(Industry
Representative
)

Burden time per response:	6 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	4 additional documents	
Annual Burden:		24 hours
Annual Cost:		\$1,800

Calculation: 4 additional documents x 6 hrs. = 24 hours

F. (f) Disposition of petitions for modification.

(1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in 49 CFR § 231.33(f).

FRA estimates that zero (0) objections will be raised by an interested party during the 60-day comment period. Consequently, there is no burden associated with the above requirement.

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with an applicable Federal statute, that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

FRA estimates that zero (0) petitions will be reopened for good cause shown. Consequently, there is no burden associated with the above requirement.

Total annual burden for this entire requirement is 16,656 hours (4,800 + 48 + 10,848 + 576 + 360 + 24), or a total annual cost of \$1,249,200.

Total annual burden for this entire information collection is **35,107 hours** (18,451 + 16,656), or a total annual cost of **\$2,633,025**.

13. Estimate of total annual costs to respondents.

Based on the above estimates, additional costs to respondents outside of the burden hour estimates would be as follows (*for hard copies sent to FRA by mail/paper as a courtesy*):

- A. Envelopes and Postage \$440 -- (100) 9" x 12" envelopes for special approval petition documents to FRA @\$\$.40 ea. + \$4 ea. postage)

- B. Envelopes and Postage \$69 -- (100) 4.125" x 9.5" plain white envelopes for affirmation statements to FRA @\$\$.25 ea. + \$.44 ea. postage; rounded off)
- C. Envelopes and Postage \$4,972 -- (1,130 copies of special approval petition documents to employee representatives/other parties in 9" x 12" envelopes for @\$\$.40 ea. + \$4 ea. postage; rounded off)
- D. Envelopes and Postage \$173 -- (150) 4.125" x 9.5" plain white envelopes for statements of interest to FRA @\$\$.25 ea. + \$.90 ea. postage; rounded off)
- E. Envelopes and Postage \$51.75 -- (75) 4.125" x 9.5" plain white envelopes for comments to FRA @\$\$.25 ea. + \$.44 ea. postage; rounded off)
- F. Envelopes and Postage \$13.20 -- (Three (4) 9" x 12" envelope for special approval petition additional document to FRA @\$\$.40 ea. + \$4 ea. postage)
- G. Envelopes and Postage \$211.20 -- (48) 9" x 12" envelopes for modification petition documents to FRA @\$\$.40 ea. + \$4 ea. postage)
- H. Envelopes and Postage \$33.12-- (48) 4.125" x 9.5" plain white envelopes for affirmation statements to FRA @\$\$.25 ea. + \$.44 ea. postage; rounded off)
- I. Envelopes and Postage \$23,865.60 -- (5,424 copies of modification petition documents to employee representatives/other parties in 9" x 12" envelopes for @\$\$.40 ea. + \$4 ea. postage)
- J. Envelopes and Postage \$90 -- (72) 4.125" x 9.5" plain white envelopes for statements of interest to FRA @\$\$.25 ea. + \$.90 ea. postage; rounded off)
- K. Envelopes and Postage \$24.84 -- (36) 4.125" x 9.5" plain white envelopes for comments to FRA @\$\$.25 ea. + \$.44 ea. postage; rounded off)

- L. Envelopes and Postage \$17.60 -- (Four (4) 9" x 12" envelope for modification petition additional document to FRA @\$\$.40 ea. + \$4 ea. postage)

TOTAL COST \$29,961

14. Estimate of Cost to Federal Government.

FRA Headquarters employees will perform most of the duties regarding the requirements of this rulemaking and the information collection requirements associated with it during the course of their normal duties.

The additional annual cost to the Federal Government entails the hourly wage expenses for a once a year meeting of members of FRA’s Internal Task Force who helped developed this rulemaking. This meeting will last approximately a whole week (8 hrs per day x 5 days) or a total of 40 hours. *(Note: Hourly wages include 75% overhead costs and come from the 2017 OPM General Pay Schedule at the GS-14-5-level or GS-13-5 level.)*

The members of the task force are as follows:

- (1) SIDT Instructor – (GS-14-5) 40 hrs. x \$100 p/hr. = \$ 4,000
- (2) 1 Engineer – (GS-14-5) 40 hrs. x \$100 p/hr. = \$ 4,000
- (3) 1 Attorney – (GS-14-5) 40 hrs. x \$100 p/hr. = \$ 4,000
- (4) 8 Prog. Specialists (GS-13-5) 320 hrs. x \$85 p/hr. = \$27,200

TOTAL = \$39,200

15. Explanation of program changes and adjustments.

The burden for this information collection has **increased** by **4,620 hours** from the last submission. The increase in burden is solely the result of **adjustments**, which are completely delineated in the table below.

TABLE FOR ADJUSTMENTS

Part 231 Sec./ Form Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
231.33(b)(6)-	100 statements	100 statements	50 hours	200 hours	+ 150 hours

Statement that petitioner has served a copy of the petition on designated representatives of employees responsible for the equipment's operation, testing, and maintenance under this part	30 minutes	2 hours			0 responses
(c) Service – Statement of interest filed with FRA by members of public interested in reviewing special approvals under the particular requirements of this part at least 30 days but not more than 5 years prior to filing of petition	300 statements 8 hours	150 statements 8 hours	2,400 hours	1,200 hours	-- 1,200 hours -- 150 resp.
(e) Comments on Petition	150 comments 10 hours	75 comments 10 hours	1,500 hours	750 hours	-- 750 hours -- 75 responses
231.35 – Petition for Modification of an Approved Industry Standard	24 petitions 160 hours	48 petitions 100 hours	3,840 hours	4,800 hours	+ 960 hours + 24 responses
- Affirmation statements that petition copy has been sent to employees' representatives	24 statements 30 minutes	48 statements 60 minutes	12 hours	48 hours	+ 36 hours + 24 responses
- Service/copy of each special approval petition on groups/ persons specified in section 231.35(b)	2,712copies 2 hours	5,424 copies 2 hours	5,424 hours	10,848 hours	+ 5,424 hours + 2,712 resp.

Total **adjustments** increased the burden by *4,620 hours* and increased the number of responses by *2,535*.

The current OMB inventory for this information collection shows a total burden of 30,487 hours, while the present submission exhibits a total burden of 35,107 hours. Hence, there is a burden increase of **4,620 hours**.

Based on the revised estimates, the cost to respondents from the previous submission has increased by **\$11,826** (from \$18,135 to \$29,961). The change in cost to respondents is solely due to **adjustments**.

16. Publication of results of data collection.

FRA has no plans to publish this information.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. FRA's rules and resulting information collections are designed to promote and enhance national rail safety. Without the information collected, there would be no clear, current, and accepted industry standard regarding the safe placement and securement of safety appliances on modern rail equipment. Without such a standard, technological advancements and ergonomic design standards for new car construction could not be incorporated for the construction of the new rail cars and locomotives. Safety appliances then might be placed and secured on newly built rail equipment in an unsafe, improper, or inconvenient location, thus contributing to more train crew and other rail employee injuries and fatalities.

The collection of information assists both DOT and FRA in fulfilling their top goals and primary mission, which is to promote and enhance national safe transportation throughout the United States.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.